

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ROCCO FUNARI §
v. § CIVIL ACTION NO. 5:13cv8
JASON SMITH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Plaintiff Rocco Funari filed this lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are Jason Smith, Richard Smith, Stephanie Coppedge, Brian Nichols, and Billy Taylor.

Funari complains of an alleged use of force occurring on November 17, 2011. All of the Defendants except for Brian Nichols have been served with process and have answered the lawsuit; service of process on Nichols has been attempted without success. The answering Defendants filed a motion for summary judgment, to which Funari filed a response.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion for summary judgment be granted as to the claims against Stephanie Coppedge and as to any claims for monetary damages brought against the Defendants in their official capacities. The Magistrate Judge further recommended that the motion for summary judgment be in all other respects denied. Copies of the Report were sent to the parties, but no objections have been received; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review

of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court.

Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 44) is hereby **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendants' motion for summary judgment (docket no. 31) is hereby **GRANTED** as to the claims against Stephanie Coppedge and any claims for monetary damages brought against the Defendants in their official capacities. This order dismisses Coppedge as a party to the lawsuit. It is further

ORDERED that the Defendants' motion for summary judgment is in all other respects **DENIED**.

It is SO ORDERED.

SIGNED this 26th day of November, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE